1945. **File No.** O. Medical Pract/45-

Legal Department

A BRANCH

K

Subject: Opinions under the Medical Practitioner's Act, 1938.

(E)

File No. O. Medical Pract./45-

Gen. 191 c.

241-A

CONTENTS.

Legal Department File No. C.Medical Pract /1945

Sr.No.	M.I./C.No.	Subject	Pages
		Opinions under the Medical Practioners' Act. 1938.	
1.	1930 10-3-45	State Faculty of Ayurvedic System of Medicine-Function of-	1-4
2.	4931 4-9-45	Sec. 32 Question whether the proposed exemption of Hakim Isphahani from the provisions of the Act is feasible.	5-6
3.	6663 12-9-45	Question whether the procedure adopted by the Board of Indian Systems of Medicine for the election of members on the Executive committee is inkeeping with the requirements of the Rules.	7-8

S.A.K.
11-7
5 copies

13/7

LETTER.

No. 1930.
Office of the
Remembrancer of Legal Affairs.
Bombay Castle. 10th March 1945.

To

The Surgeon-General with the Government
of Bombay.
Bombay, No.1.

Subject:- State Faculty for Ayurvedic System of Medicine Functions of-

---

With reference to your letter No. S-66(10)/D. dated the 4th December 1944, on the above subject, I have the honour to enclose herewith my opinion on the subject referred to.

2. The papers of the case accompany.

Sd/-P.N.Moos
9-3-45.

O.C. Remembrancer of Legal Affairs.

U.
Sub-mitted for signature

MVT
9-3

SAS R.T.K.
9-4
A.L.R. Sd/-N.S.A.
9-3

R.LA.

S.A.K.
11-7
4 copies

Office of the R.L.A.

The State Faculty's letter at page 25 does not state accurately the Board's power to call for particulars. The Board for the purpose of maintaining an adequate standard a may call for particulars of any examination and not merely particulars of the rules of any examination. That power would include the power to call for particulars of the -- method by which examiners are selected and appointed. The Board's request in this case is not however for particulars but for remarks and information on the action taken. If a very legal view is taken, it can be argued that such a request is outside the scope of section 22(3)(a) of the Bombay Medical Practitioners' Act, 1938. But it is obvious that the Board can frame its request in other ways ~~hm~~ to bring it within the scope of that section. It is advisable therefore for the State Faculty to enter into amicable correspondence with the Board without provoking a debate on the legal issue. For example, the ~~x~~ Board might be asked to state more clearly what particulars of the examination it wants under section 22(3)(a).

Sd/-P.N.Moos
9-3-45

Remembrancer of Legal Affairs.

MxR.
Submitted After issue Mo.
index ~~mxk~~ card is necessary.
2. File in O. Medical Practitioners /45

M.V.T.
13-3

S.A.S. Sd/-R.T.K.
14-3

R.I.No. 5278/23-6-45

This is a reference from G.D. under the Bombay Medical Practitioners' Act, 1938.

2. The case relates to the proposed exemption of Hakim Isphahani from the provisions of Bombay Medical ~~Practitioners~~ Practitioners' Act, 1938. On account of circumstances which he describes as unavoidable the Hakim was unable to register his name under the Act as a medical practitioner within prescribed time. The date for registration having expired, the Hakim prayed for an exemption under the Act to allow him to practice in the Unani medicines for which he is widely known. The matter was referred to R.L.A. for opinion whether such exemption under the Bombay Medical Practitioners Act was feasible. R.L.A. had opined (Pl. see R.L.A.'s No. 7597, dated 26th July 1939) that the exemption contemplated by sec. 32 of the Act was with reference to any class of persons and not with reference to individuals. It was stated therein "The proviso was deliberately restricted to exemption in favour of a class, as it was the intention of the Govt. not to grant exemptions to individuals." However in view of an informal opinion expressed by the R.L.A. to Mr. Rahimtoola that "This class of persons are rare in this country and should be allowed to practice in the interest of humanity" (pl. see Mr. Rahimtoola's letter at p. 15 ante), the papers have again been referred by G.D. for clarification. Hakim Isphahani is no doubt a great Hakim whose renown in the field of Unani Medicine is worthy of sympathetic consideration for this case. That, unintentional laches on Hakim Isphahani's part for registration under the Act should result in his disqualification as a medical practitioner under the Act is regrettable. But it appears that so far as the legal side of the case is concerned, there is no other course

S.A.K.
11-7
4 copies

open to remedy it. and R.L.A.'s informal opinion given to Mr. Rahimtoola, in no way depart from this . As the relevant provision under the Act i.e. sec. 32 dpx does not authorise exemption of individuals, it may be stated that the legal position stated in R.L.A.'s No. 7597 dated 26th July 1939 still holds good. whether as a special case. Hakim Isphani should be allowed to practice is however a matter for Govt. to consider.

Id/-K.J.Pathare
26-6-45

S.A.S. I agree . Reply may be:-

The view expressed by the R.L.A. in his opinion No. 7597 da ted 26-7-1939 is correct and needs no modification.

Id/-R.T.K.
27-6

A.L.R. I. agree.

The opinion of 1939 was gi ven by Mr. Dhurandhar. I now put the L.D. file containing it.But it is not ~~and needs no modification.~~ helpful since now of the underlying notes to have been kept.

Id/-R.S.H.
29-6

R.L.A. Reply as followed:-

The view expressed by the R.L.A.(Mr. Dhurandhar) in his opinion No. 7597 dated 26th July1939 is correct and needs no modification.

The informal opinion which I had expressed to Mr. Fazal Rahimtoola was that Govt. was not competent to exempt individuals under the proviso to sec. 32 of the Bombay Medical Practitioners& Act 1938, but it had power to exempt a class of persons possessing such special qualifications or fulfilling such conditions as it may determine or impose.

Id/-P.M.Moos
3-7-45

U.R. to G.D.No. 4931. dated 4-7-1945.

S.A.K.
11-7
4 copies

Office of the R.L.A.

Rule 39 of the Bombay Medical Practitioners Rules, 1939, provides that the Executive Committee of the Board shall consist of the President and six members of the Board elected by ballot at the first meeting of the Board in each year. The Rules do not prescribe any detailed procedure as to how the electio by ballot should be conducted. It however appears that the procedure hitherto followed by the Board is as under -

> "The names of the twelve members of the Board (excluding the President) are typed on 13 sheets of papers. These papers are distributed to all the thirteen members (including the President) and they are asked to make signs not exceeding six as one sign each before the names of the members whom they want to vote for. The papers are returned by the members to the President immediately who counts the votes and declares the result."

A member of the Board has objected to the aforesaid procedure on the ground that "the names of the members have to be proposed and seconded at the meeting and the ballot vote should be taken on a paper containing only the names of members so proposed and seconded: otherwise the election is irregular". The Surgeon General considers that the objection is raised by the member is invalid and the Secretary, General Department, agrees with him. The R.L.A. is requested to advise.

2. "Ballot" means (in the laow of elections) " a slip of papere bearing the names of the offices to be filled at the particular election and the names o f candidates for whom the elector desires to vote. A ballot tikket is folded in such a manner that nothing written or printed thereon can be seen" (See Iyer's Law Lexicon p. 112). "Nomination is merely selection of candidates for office. This is merely a provision for some method of a candidate's name on the ballot" (see Aiyangar's Law of Municipal Corporations in British India p. 56).

S.A.K.
11-7
4 copies

The nomination of a candidate for the office presumes his willingness to accept office on election. Consequently the names of those candidates who are nominated can be placed on the ballot. The procedure followed by the Board in the matter of election to the Executive Committee presumes that all the twelve members of the Board are willing to be candidates for election on the Executive Committee. It would be wrong to make such a presumption unless they are properly nominated as candidates. Moreover, the votes cast in favour of unwilling candidates would be wasted and might prejudicially affect the ex chances of some other candidates. Consequently the objection taken by one of the members to the procedure hitherto followed is not without force. The nomination of candidates before voting by ballot appears to be essential.

Id/-P.N.M.
8-9-45

Remembrancer of Legal Affairs.

U.R. to G.D.No. 6663, dated the 12th September 1945.

S.A.K.

11-7
4 copies